

## REMARKS

### Interview Summary

Applicant thanks Examiner Godbold for the courtesy of a telephonic interview with the Applicant's representatives Mr. Denis Maloney (Reg. No. 29,670) and Mr. Frank Gerratana (Reg. No. 62,653) on August 11, 2009.

During the interview, Applicant's representatives discussed the rejection of claim 1 and possible amendments. The examiner agreed that amendments to claim 1 and related claims 15 and 28 would likely distinguish the claims from the cited references, and suggested submitting a response along the lines of the proposed amendments. The examiner further agreed to follow up with a telephone call if he believes a further amendment would be necessary.

### 35 U.S.C. § 103

The examiner rejected claims 1-31 under 35 U.S.C. 103(a) as being unpatentable over Bennett (U.S. Patent 7,050,977) in view of Smith (U.S. Patent 6,853,982) and further in view of Herz et al. (U.S. Pub. No. 2001/0014868).

Claim 1 has been amended to call for "generating additional, voice-synthesized, follow-up responses through the avatar in response to occurrences of the transactions, ... based on information stored in the database ... regarding the transactions, receiving ... subsequent text inputs from the user ... and analyzing ... the transactions, the subsequent text inputs, and the voice-synthesized, follow-up responses ... to produce market research information."

As amended, claim 1 is neither described nor suggested by any combination of Bennett, Smith, and Herz.

The examiner stated:

**In the same field of e-commerce, SMITH teaches  
generating follow-up messages to send to the user ("generates a list of additional items  
that are predicted to be of interest to the user", column 7, lines 30-32) that are based on  
added information stored in the database (see column 9, lines 37-52, a list of information used  
to generate the recommendation)**

Claim 1 has been amended to clarify that the generated "follow-up responses...includ[e] information regarding the transactions." Smith is not understood to disclose this feature. The cited passages of Smith are reproduced below:

**In one embodiment the service ("Recommendation Service") used to recommend book titles, music titles, video titles, toys, electronics products, and other types of products to users.<sup>1</sup>**

**the Recommendation Service generates a list of additional items ("recommendations") that are predicted to be of interest to the user.<sup>2</sup>**

**As illustrated by FIG. 1, the data stored for each user may include one or more of the following types of information (among other things) that can be used to generate recommendations in accordance with the invention: (a) the user's purchase history, including dates of purchase, (b) a history of items recently viewed by the user, (c) the user's item ratings profile (if any), (d) the current contents of the user's personal shopping cart(s), and (e) a listing of items that were recently (e.g., within the last six months) removed from the shopping cart(s) without being purchased ("recent shopping cart contents"). If a given user has multiple shopping carts, the purchase history for that user may include information about the particular shopping cart used to make each purchase; preserving such information allows the Recommendation Service to be configured to generate recommendations that are specific to a particular shopping cart.<sup>3</sup>**

Thus, Smith generates recommendations for items (also described as products) that are predicted to be of interest to the user. Smith's item recommendations are not follow-up responses that include information regarding the transactions, as called for in claim 1. Rather, Smith only describes using information about a user to generate a list of additional items for purchase. Smith neither describes nor suggests generating anything that includes information regarding a transaction.

Accordingly, at least this element of claim 1 is missing from Smith. Further, Bennett appears to describe storing questions for the purpose of determining an answer in a later processing step.<sup>4</sup> Bennett does not describe either the generating or the analyzing features involving the voice-synthesized, follow-up responses. Thus, at least this element of claim 1 is also absent from Bennett.

The examiner stated:

**In the same field of e-commerce, HERZ teaches that the follow-up messages with the user are statistically analyzed to generate marketing related information (paragraph 0037 describes creating recommended offers based on previous offers and whether they have been accepted by a user).**

Paragraph 0037 of Herz is reproduced below:

**4. Select offers-The main computer selects offers from the offer database that are likely to result in profitable sales. Methods for doing this, which are described later in more detail, require the system to predict which offers the shopper would be likely to accept. The**

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<sup>1</sup> Smith, Col. 7, lines 20-24

<sup>2</sup> Smith, Col. 7, lines 29-32

<sup>3</sup> Smith, Col. 9, lines 36-52

<sup>4</sup> Bennett, Col. 26, lines 1 – 14

likelihood of acceptance can be calculated, in the simplest case, by counting what fraction of shoppers (or similar shoppers) who were presented with this offer (or similar offers) chose to accept. A key question is how to determine similarity. To this end, the system considers not only the shoppers present goals (as determined in step 3) and the offer profiles, but also the stored profile of this shopper. The shoppers profile includes a summary of offers that the shopper has accepted in the past, as well as demographic and psychographic data that aid in identifying similar shoppers. The system may amplify the shopper's profile with his or her present goals, as mentioned above, and with any offers that the shopper has recently considered or accepted. For example, if the shopper has just bought ski goggles, the system might select offers of other ski-related equipment that is frequently bought along with ski goggles. Once the system has determined a shoppers likelihood of accepting a given offer, it can calculate the expected profit from making that offer (namely, the profit if accepted times the probability of acceptance). However, expected profit is only one criterion that a vendor might use to select offers. Vendors often prefer not to maximize short-term profit but rather to build a long-term relationship with a shopper. This may involve selecting offers that have lower expected profit, but that are likely to improve the shopper's perception of the vendor, or allow the vendor to gather further information about the shopper's preferences which can be used to sell future items. Hence, other selection criteria may be used.

Herz selects offers based on what fraction of shoppers accepted the offer, what offers a shopper has accepted, demographic and psychographic data, and further criteria other than expected profit. The examiner stated that this passage discloses "creating recommended offers based on previous offers and whether they have been accepted by a user." However, this is not "analyzing ... the transactions, the subsequent text inputs and the voice-synthesized, follow-up responses about the transactions to produce market research information," as called for in the claim. Rather, Herz merely analyzes transactions and presents offers for new transactions for a shopper to consider. Nothing in Herz appears to disclose or suggest voice-synthesized, follow-up responses about the transactions, and so Herz certainly does not disclose or suggest "analyzing...the voice-synthesized, follow-up responses about the transactions..."

Accordingly, at least this element of claim 1 is missing from Herz. Further, as indicated by the examiner<sup>5</sup>, Bennett and Smith also do not teach this element of claim 1. Claim 1 is thus allowable over the references.

Independent claims 15 and 28 are directed to similar subject matter as claim 1, and are allowable for analogous reasons as discussed above.

All of the dependent claims are patentable for at least similar reasons as those for the claims on which they depend are patentable.

Canceled claims have been canceled without prejudice or disclaimer.

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<sup>5</sup> "BENNETT and SMITH do not specifically teach that the follow-up messages with the user are statistically analyzed to generate marketing related information." Office Action, pg. 5

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Any circumstance in which the applicant has (a) addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner, (b) made arguments for the patentability of some claims does not mean that there are not other good reasons for patentability of those claims and other claims, or (c) amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

The examiner is invited to contact the undersigned attorney's colleague, Frank L. Gerratana (Reg. No. 62,653), with any questions or comments at 617-956-5935.

Please apply the \$208.00 excess claim fee and any other charges or credits to deposit account 06-1050 referencing attorney docket number 13151-0006001.

Respectfully submitted,

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